IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11712 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ALAUDDIN RAJPARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11712 of 1994

MR MA KHARADI for Petitioner No. 1

RULE SERVED for Respondent No. 1

Mr. Sen, AGP for Respondent No. 2-3

MR SK BUKHARI for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 26/09/2001

ORAL JUDGEMENT

Heard learned advocate Mr. Kharadi for the petitioner, Mr. Sen, learned AGP for respondents nos. 2

and 3 and Mr. Bukhari, learned advocate for Respondent No.4. By order dated 12th October, 1994, this petition was admitted by issuing rule thereon. Today, pursuant to the note filed by the learned advocate Mr. Kharadi for the petitioner for fixing the matter for final hearing, this matter has been placed before this court alongwith the note dated 10.9.1994 filed by Mr. Kharadi. However, since the matter could be disposed on the short ground of pendency of application dated 20th November, 1992, same was taken up for final hearing with the consent of the learned advocates for the parties. Learned advocate Mr. Bukhari appearing for respondent No.4 has placed on record the affidavit filed by respondent No.4 and copy thereof has been supplied to the other side. He has also filed further affidavit in reply filed by respondent No.4 and copy thereof has been supplied to the other side.

Brief facts of the present petition are to the effect that the petitioner has occupied the land in question as the father of respondent No.4 has registered agreement to sale on 31.5.1969. The respondent No.2 has decided the case No.17 of 1981 and thereby has held that the possession of the suit land to be restored to the father of the respondent No.4 (vendor) on 30.9.1986. A panchanama has been prepared and thereby it has been shown that the possession of the suit land has been taken away from the petitioner and the same has been shown that the possession of the suit land has been taken away from the petitioner and the same has been restored with the respondent No.4 on 7.2.1990. Thereafter, revision application no. 7 of 1990 was preferred by the petitioner on 23.3.1990. The respondent No.1 set aside the order passed by the respondent No. 2 on 28.1.1991. Thereafter, the petitioner made an application to respondent No.2 to restore the possession of the suit land by preparing a panchanama in terms of the order passed by the first respondent dated 28.1.1991 on 20.11.1992. However, the respondent no. 2 has not taken any application and, therefore, the petitioner has filed the present petition before this court.

I have considered the order passed by the revisional authority on 28.1.1991. The directions issued by the first respondent by order dated 28.1.1991 have still remained unimplemented though the same have not been disturbed by any higher authority. Application dated 20th November, 1992 made by the petitioner for restoring the possessing by preparing a panchanama in terms of the order passed by the revisional authority dated 28th January, 1991 is still pending before the respondent No. 2 and therefore, I am of the view that some directions

are required to be issued to respondent No.2 to examine the application of the petitioner dated 20th November, 1992 which is at annexure "D" page 21 of the petition and to pass appropriate order after giving opportunity of hearing to respondent No. 4 within some reasonable period.

Therefore, in view of these facts, without entering into the merits of the matter, respondent no.2 is directed to examine the application of the petitioner dated 20th November, 1992 (Annexure "D" page 21) made by the petitioner pursuant to the order dated 28th January, 1991 passed by the revisional authority and to pass appropriate order on such application in accordance with law after giving opportunity of hearing to respondent No. 4 within two months from the date of receipt of certified copy of this order. It is further directed to respondent NO.2 to consider the orders passed by the respondent No.1 dated 28th January, 1991 in revision application no. 7 of 1990 while passing order on the application dated 28th January, 1992. With these observations and directions, present application shall stand disposed of. Rule is made absolute with no order as to costs.

26.9.2001. (H.K. Rathod,J.)

Vyas